

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.  
2007 JAN 18 A 9 36  
CLERK *B. McCarty*

LAWRENCE RUPERT SMITH,	)	
	)	
Petitioner,	)	
	)	
v.	)	CV 106-059
	)	
CYNTHIA NELSON, Warden,	)	
	)	
Respondent.	)	

**ORDER**

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, Respondent's motion to dismiss is **GRANTED IN PART** and **DENIED IN PART**, claim three in Petitioner's § 2254 petition is **DISMISSED** without prejudice, and the remainder of Petitioner's § 2254 petition shall be allowed to proceed. Respondent has twenty (20) days from the date of this Order to brief her position as to Petitioner's remaining claims

SO ORDERED this 18<sup>th</sup> day of January, 2007, at Augusta, Georgia.

*Audrey T. Brown Jr.*  
UNITED STATES DISTRICT JUDGE